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Before the
Federal Communications Commission
Washington, D.C. 20554

2002 MAY 22 P 4: 17

In the Matter of

Access Charge Reform

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CC Docket No. 96-262 VED

ORDER

Adopted: May 17, 2001

Released: May 21, 2001

By the Commission:

1. In the *First Report and Order*,¹ we tentatively concluded that we should permit price cap local exchange carriers (LECs) to assess a presubscribed interexchange carrier charge (PICC) on their special access lines to enable them to recover some of the common line costs assigned to the federal jurisdiction that they incur in providing switched access service to residential and single line business lines.² Commenters unanimously opposed that proposal.³ For the reasons below, we decline to permit the assessment of such special access PICCs. We also terminate our inquiry into such an assessment.

2. Prior to our *First Report and Order*, price cap LECs recovered their common line costs primarily through two types of access charges: a flat-rate, end user common line charge, known as the subscriber line charge (SLC),⁴ and a usage-based, carrier common line (CCL) charge. In that *Order*, we permitted a modest increase in the ceilings for the SLCs on both multi-line business lines and non-primary residential lines to enable price cap LECs to recover more of their common line costs through those SLCs.⁵ The *First Report and Order* also permitted incumbent LECs to collect from each interexchange carrier (IXC) a monthly charge on each switched access line presubscribed to that IXC.⁶ We authorized this PICC to enable incumbent LECs to recover allowed common line revenues that the SLC caps prevented them from recovering. To the extent that revenues from the maximum SLCs and PICCs on primary residential and SLB lines were inadequate to recover the full common line revenues

¹ Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charges, CC Docket Nos. 96-262, 94-1, 91-213, 95-72, *First Report and Order*, 12 FCC Rcd 15982 (1997) (*First Report and Order*), *aff'd sub. nom.*, *Southwestern Bell Telephone Co. v. FCC*, 153 F.3d 523 (8th Cir. 1998).

² *First Report and Order*, 12 FCC Rcd at 16155, para. 403.

³ Appendix A identifies those parties that filed initial and reply comments.

⁴ LECs assess SLCs on primary residential lines, on second and additional (non-primary) residential lines, on single line business (SLB) lines, and on multi-line business (MLB) lines.

⁵ *First Report and Order*, 12 FCC Rcd at 16005, para. 58. Because the LECs' common line costs are not very traffic sensitive, we have sought to reduce these carriers' reliance on usage-based, CCL charges to recover such costs and to place more reliance on flat-rated charges such as the SLC and the PICC.

⁶ *First Report and Order*, 12 FCC Rcd at 16004, para. 55.

permitted by our price cap rules, we authorized incumbent LECs to recover the difference through a PICC on non-primary residential and MLB lines.⁷ As in the past, we authorized these LECs to recover any remaining permitted common line revenues through their CCL charges.⁸

3. In adopting these new access charge rules, we recognized that multi-line businesses and other large users would pay higher SLCs on their switched access lines. Similarly, as the PICCs were phased in, the Commission anticipated that IXCs would pay higher PICCs for lines to MLB end users as compared with the PICCs they paid on lines to primary residential and SLB end users. Taken together, we were concerned that these changes might result in MLB users paying significantly more for their switched access lines. In contrast, users of special access service did not then (and do not now) pay a SLC on their lines. Similarly, IXCs do not pay PICCs on their special access lines. In light of the anticipated increases in some of the per-line charges incurred by multi-line businesses and other large users for their switched access services, we noted in the *First Report and Order* that it might be cost effective for these users to abandon their switched access lines and to migrate to special access lines.⁹

4. In the *First Report and Order*, we expressed concern that such migration might result in a decrease in the projected revenue of incumbent LECs from their MLB SLCs. As a result of such a projected decrease, we expected PICCs on the remaining switched access lines or CCL charges to increase, to the extent permitted.¹⁰ Accordingly, the *First Report and Order* tentatively concluded that we should permit price cap LECs to assess a PICC on special access lines to enable those LECs to recover additional common line revenues without resort either to larger PICCs or CCL charges. The proposed special access PICCs were to be temporary in duration, because they were to be phased out as the residential and SLB PICCs were implemented more fully.

5. Since the *First Report and Order*, several developments have led us to conclude that it is no longer necessary to consider the assessment of PICCs by price cap LECs on special access lines. Those developments include later rule changes made in this access charge reform proceeding including increased SLCs and the elimination of residential PICCs,¹¹ the apparent lack of significant migration of large users from switched access services to special access as a result of the MLB PICC,¹² and the unanimous opposition of the commenters.

⁷ We authorized assessment of the MLB PICC to enable incumbent LECs to recover revenues that would otherwise be recoverable through charges on residential and SLB lines and not to recover the cost of serving MLB lines. Accordingly, the express purpose of the MLB PICC has been to subsidize the price cap LECs' interstate portion of the local loop costs they incur to provide switched residential and SLB service. See *First Report and Order*, 12 FCC Rcd at 16023, para. 101.

⁸ *First Report and Order*, 12 FCC Rcd at 16022, para. 99.

⁹ *Id.* at 16154, para. 401.

¹⁰ *Id.* at 16154, para. 402.

¹¹ See, e.g., Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, CC Docket Nos. 96-262 and 94-1, Sixth Report and Order, 15 FCC Rcd 12962 (2000), *pets. for rev. pending sub nom. Texas Office of Public Util. Counsel et al. v. FCC*, No. 00-60434 (and consolidated cases) (5th Cir. filed June 26, 2000).

¹² See FCC, Common Carrier Bureau, Industry Analysis Division, Trends in Telephone Service, Table 1.3 (February 1999, February 2000, February 2001).

6. As required by the Regulatory Flexibility Act (RFA),¹³ the *First Report and Order* included an Initial Regulatory Flexibility Analysis (IRFA) with reference to the Further Notice of Proposed Rulemaking found therein.¹⁴ In the IRFA, the Commission noted that there were thirteen incumbent price cap LECs at that time,¹⁵ that it had limited to those LECs the scope of its proposal to permit the assessment of PICCs on special access lines, and that it had tentatively concluded that each of those LECs had more than 1500 employees and, therefore, that none was a small entity.¹⁶ The Commission sought written public comment on its special access PICC proposal, its tentative conclusions, and the related IRFA. No comments were received concerning the conclusion that those price cap carriers were not small entities, the limitation of the special access PICC proposal to such carriers, or the related provisions of the IRFA. This Final Regulatory Flexibility Analysis conforms to the RFA, as amended by SBREFA.

7. We certify that, under the RFA, there will not be a significant economic impact on a substantial number of small entities resulting from this Order. As explained above, this Order simply terminates our inquiry into whether we should permit price cap LECs to assess PICCs on their special access lines to enable them to recover some of their common line costs. Because this Order does not require or otherwise authorize any change in the provision of access services or the recovery of common line costs by these carriers, there will not be any significant economic impact on these carriers or on any of their customers including small entities. The Commission will send a copy of this Order, including this final certification, to Congress pursuant to the SBREFA¹⁷ and to the Chief Counsel for Advocacy of the Small Business Administration.¹⁸ A summary of this Order, including this certification, will be published in the Federal Register.¹⁹

8. We, therefore, decline to adopt the tentative conclusion in the *First Report and Order* that price cap local exchange carriers should be permitted to assess a presubscribed interexchange carrier charge on their special access lines. We further ORDER that the Inquiry initiated in CC Docket No. 96-262 into the assessment by these carriers of such a charge on their special access lines is hereby TERMINATED but that this docket shall REMAIN OPEN for other purposes. IT IS FURTHER

¹³ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601 *et seq.*, was amended by the Contract with America Advancements Act of 1996, Pub. L. 104-121, 110 Stat. 87 (1996). Title II of the CWAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

¹⁴ *First Report and Order*, 12 FCC Rcd at 16170-16172, paras. 444-453.

¹⁵ As of April 30 of this year, four Regional Bell Operating Companies and eight other LECs were subject to price cap regulation. See Material to be Filed in Support of 2001 Annual Access Tariff Filings, Tariff Review Plans, DA 01-1105 (Com.Car.Bur., Comp. Pricing Div., Apr. 30, 2001), para. 3. While one or more of these eight other LECs may have less than 1500 employees, this Order will not have a significant economic impact on those LECs or any other small entities for the reasons set forth in the next paragraph.

¹⁶ *First Report and Order*, 12 FCC Rcd at 16171-16172, paras. 449-453.

¹⁷ 5 U.S.C. § 801 (a)(1)(A).

¹⁸ 5 U.S.C. § 605(b).

¹⁹ *Id.*

ORDERED that the Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration. This action is taken pursuant to the authority contained in Sections 1, 4(i) and (j), 201-209, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i) and (j), 201-209, and 403.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, reading "Magalie Roman Salas". The signature is written in a cursive, flowing style.

Magalie Roman Salas
Secretary

APPENDIX A
Access Charge Reform, CC Docket No. 96-262
First Report and Order

Comments

Ad Hoc Telecommunications Users Committee (Ad Hoc)
America Online, Inc.
American Petroleum Institute
Ameritech Operating Companies (Ameritech)
AT&T Corp. (AT&T)
Bell Atlantic Telephone Companies, New York Telephone Company, and New England Telephone and Telegraph Company (BA/NYNEX)
BellSouth Corporation and BellSouth Telecommunications Inc. (BellSouth)
Cincinnati Bell Telephone Company
Competitive Telecommunications Association
Frontier Corporation
GTE Service Corporation and affiliated telephone operating companies (GTE)
Information Technology Association of America and Internet Access Coalition
MCI Communications Corporation (MCI)
The Southern New England Telephone Company
Southwestern Bell Telephone Company, Pacific Bell, and Nevada Bell (SWB/PNB)
Sprint Corporation (Sprint)
United States Telephone Association (USTA)
U S West, Inc.
WorldCom, Inc.

Reply Comments

Ad Hoc
Ameritech
AT&T
BA/NYNEX
BellSouth
GTE
MCI
Sprint
SWB/PNB
USTA